

SENATE BILL 2597

By Hensley

AN ACT to amend Tennessee Code Annotated, Title 4 and  
Title 49, relative to persons unlawfully present in  
the United States.

WHEREAS, the United States has restricted immigration into this country since the late 19th century and although unsanctioned entry into the United States is a crime, a substantial number of persons have succeeded in unlawfully entering the United States; and

WHEREAS, the Equal Protection Clauses of the United States Constitution and the Tennessee Constitution require that all persons similarly situated be treated alike, but do not require different categories of persons to be treated identically under the law; and

WHEREAS, the United States Supreme Court recognized in Plyler v. Doe, 457 U.S. 202 (1982), that State legislatures primarily determine what is "different" and what is "the same" under State law, and "must have substantial latitude to establish classifications" to address the nature of the problem perceived by the State legislature, while also considering competing public and private concerns and the State's limited revenues and resources; and

WHEREAS, undocumented status may be relevant to a proper legislative goal; and

WHEREAS, the four dissenting justices in Plyler found that it is not unconstitutional for a State legislature to differentiate between persons who are lawfully within the State and those who are unlawfully there based not only upon the State's legitimate interest in thoughtfully preserving and allocating its finite revenues and resources, but also on classifications established by the Federal Government in its own immigration laws and policies, and

WHEREAS, more than a quarter of Tennessee's budget, over \$4.8 billion dollars, is dedicated each year to funding kindergarten through grade twelve (K-12) education; and

WHEREAS, the State of Tennessee has a significant interest in allocating its finite revenues and resources to maintain and support public school systems that afford substantially equal educational opportunities to students who are lawfully within the State; now, therefore, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 6, Part 30, is amended by adding the following as a new section:

(a) It is the policy of this state that state revenues and resources should not be expended on, or otherwise provided to, persons present in the United States unlawfully, but instead on Tennessee residents who are lawfully present in the United States.

(b)

(1) An LEA or public charter school may enroll, or refuse to enroll, a student who is unlawfully present in the United States.

(2) If an LEA or public charter school chooses to enroll a student who is unlawfully present in the United States, then the department of education shall withhold from the LEA or public charter school, for each such student, the amount representing the per pupil state funds generated through the basic education program (BEP) for the LEA in which the student resides.

(3) The department shall not count a student who is unlawfully present in the United States as part of the BEP calculations for an LEA.

(4) An LEA or public charter school that enrolls a student who is unlawfully present in the United States is solely responsible for all costs associated with educating the student and has no claim or right of action against the state for failing to provide or contribute to the educational costs.

(c) Each LEA and public charter school shall report:

(1) Whether the LEA or public charter school will allow students who are unlawfully present in the United States to enroll in public school in the upcoming school year. The report must be submitted to the department no later than July 1, 2022, for the 2022-2023 school year and annually thereafter; and

(2) Beginning with the 2022-2023 school year, the number of students enrolled in the LEA or public charter school who are unlawfully present in the United States. The report must be submitted to the department no later than July 1, 2023, for the 2022-2023 school year and annually thereafter.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.